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Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Concluding observations on the initial report of the Gambia*

1. The Committee on Economic, Social and Cultural Rights considered the initial report of the Gambia on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/GMB/1) at its 6th meeting (see E/C.12/2015/SR.6), held on 25 February 2015, and adopted the following concluding observations at its 20th meeting, on 6 March 2015.

A. Introduction

2. The Committee welcomes the initial report submitted by the State party despite the considerable delay in its submission, and the supplementary information provided in the State party's common core document (HRI/CORE/GMB/2012). However it regrets the State party's failure to submit its written replies to the Committee's list of issues.

3. Noting the importance of the full engagement of States parties in the interactive dialogue with the human rights treaty bodies (see General Assembly resolution 68/268, adopted in April 2014), the Committee regrets that, in the absence of a delegation from the State party, it was unable to follow its usual practice of considering the reports of State parties in the presence of representatives of the State concerned. The State party informed the Committee of its inability to send a delegation through a note verbale, received only after the date scheduled for the initiation of the consideration of the State party's report. In accordance with rule 62, paragraph 3, of the Committee's rules of procedure and its established practice, the Committee proceeded with the examination of the report at the time scheduled, even in the absence of a representative of the State party. The Committee wishes to remind the State party that dialogue is an integral part of the consideration of the report and provides a unique opportunity for the Committee and the State party to hold constructive, in-depth discussions which, together with the report submitted by the State party and other information received, allow the Committee to assess the progress made and to indicate to the State party the areas where further efforts are needed. The Committee wishes to draw the State party's attention to the opportunity that it has missed to introduce its report, present supplementary information or updates and provide the necessary clarifications and answers to the questions put by Committee members. The Committee deeply regrets that its task of evaluating the implementation of the Covenant in the State party as objectively as possible was severely affected by the State party's failure to attend

* Adopted by the Committee at its fifty-fourth session (23 February–6 March 2015).

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the meetings at which its report was considered, and urges the State party to be present during the consideration of its next report.

B. Positive aspects

4. The Committee welcomes the ratification of the:

(a) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2010;

(b) African Union Convention on Preventing and Combating Corruption, in 2009;

(c) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, in 2005.

5. The Committee notes with appreciation the following legislative and policy measures adopted by the State party:

(a) Domestic Violence Act and the Sexual Offences Act in 2013;

(b) Women's Act 2010;

(c) Trafficking in Persons Act 2007 and its amendment in 2010;

(d) Labour Act 2007;

(e) Children's Act 2005.

6. The Committee also welcomes the following institutional and policy measures:

(a) National Plan of Action for Accelerated Abandonment of Female Genital Mutilation 2013-2017;

(b) National Nutrition Policy (2010–2020) and the establishment of the National Nutrition Agency;

(c) National Education Policy 2004–2015;

(d) National Agency Against Trafficking in Persons.

C. Principal subjects of concern and recommendations

Status of the Covenant

7. While noting that the State party has integrated some of the Covenant's provisions in domestic legislation, the Committee remains concerned that not all provisions of the Covenant are incorporated in domestic legislation. The Committee also regrets the absence of information on court cases in which the Covenant's provisions were invoked before, or applied by, the courts (art. 2, para. 1).

The Committee recommends that the State party take appropriate steps to give full effect to the Covenant in the domestic legal order, and to raise the awareness of the general public and members of the judiciary of economic, social and cultural rights and the justiciability of those rights. The Committee draws the State party's attention to its general comment No. 9 (1998) on the domestic application of the Covenant.

Data collection

8. The Committee is concerned about the absence of reliable disaggregated statistics that would allow for an accurate assessment of the progressive realization of economic, social and cultural rights in the State party (art. 2, para. 1).

The Committee recommends that the State party collect data and produce and use statistics for human rights indicators, including for economic, social and cultural rights. In this respect, the Committee refers the State party to the conceptual and methodological framework for human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (HRI/MC/2008/3). The State party is also requested to include in its next periodic report statistical data on the enjoyment of each Covenant right, disaggregated by age, sex and urban/rural population on an annual basis.

Corruption

9. The Committee is concerned about the prevalence of corruption in the State party and about the lack of effective implementation of the legal provisions criminalizing corruption, in particular in the public sector (art. 2, para. 1).

The Committee recommends that the State party intensify its efforts to combat corruption and related impunity and ensure that public affairs, in law and in practice, are conducted in a transparent manner. It also recommends that the State party make politicians, members of parliament and government officials aware of the economic and social costs of corruption, and make judges, prosecutors and the police aware of the need for strict enforcement of the law.

Maximum available resources

10. While appreciating the increase in the budget allocated for education, the Committee expresses its concern that allocations for health and social welfare remain very low. The Committee is also concerned about the lack of updated information on the State party's public spending necessary for the enjoyment of the Covenant's rights (art. 2, para. 1).

The Committee recommends that the State party regularly evaluate the budget allocations made for the implementation of the Covenant rights in order to assess whether the maximum available resources are being used in progressively achieving the full realization of these rights. In doing so, the State party should take into account the Committee's general comment No. 3 (1990) on the nature of States parties' obligations. The State party is also requested to provide, in its next periodic report, updated information on public spending for the realization of Covenant rights.

National human rights institution

11. While noting that the Constitution provides for the establishment of the Office of the Ombudsman, the Committee is concerned about the absence of a national human rights institution in the State party (art. 2, para. 1).

In the light of its general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights, the Committee recommends that the State party adopt the draft bill for the establishment of a national human rights commission without further delay and establish a national human rights institution that is provided with the necessary resources, in compliance with the principles relating to the status of national institutions (the Paris Principles).

Non-discrimination

12. The Committee expresses its concern about the absence of an anti-discrimination law which encompasses all grounds of discrimination prohibited under the Covenant. The Committee is also concerned at the criminalization of homosexuality in the State party's Criminal Code, as well as about reports of arbitrary arrest and detention of individuals perceived to be homosexual (art. 2, para. 2).

The Committee recommends that the State party adopt comprehensive anti-discrimination legislation in line with article 2, paragraph 2, of the Covenant, taking into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights. It also recommends that the State party repeal or amend all legislation that results or could result in discrimination, prosecution and punishment of people because of their sexual orientation or gender identity. The Committee further recommends that the State party take all the necessary steps to combat and prevent discrimination against lesbian, gay, bisexual and transgender persons, and ensure their enjoyment of all the rights enshrined in the Covenant.

Equality between women and men

13. While noting that non-discrimination against women is accorded national priority in the State party, the Committee is concerned that discrimination against women persists in all areas. The Committee is particularly concerned that women's participation in the public sphere has not increased despite the gender equality legislation and programmes adopted by the State party. It is also concerned about the remaining discriminatory provisions in the State party's legal system, including the personal status laws (art. 3).

The Committee calls upon the State party to intensify its efforts, including through the media, the launching of awareness-raising campaigns and the use of temporary special measures, so that equality between men and women is attained in law and in practice. In this respect the Committee recommends that the State party effectively implement the Women's Act 2010 and report in its next periodic report on progress achieved thereon. The Committee also urges the State party to abolish laws and customs which discriminate against women, particularly in marital matters, and ensure the consistency of personal status laws with the relevant human rights standards under the Covenant and other international instruments.

Harmful practices

14. The Committee is concerned about the absence of a provision criminalizing female genital mutilation in the State party's domestic legislation, and about the persistence of harmful practices, including polygamy, child marriage and domestic violence (arts. 2, para. 2, and 3).

The Committee urges the State party to introduce a legal provision criminalizing female genital mutilation and ensure its strict implementation. The State party should also intensify its efforts to prevent and combat all practices that are harmful to women and girls, including polygamy and domestic violence. It is further called upon to introduce in its legislation a harmonized minimum age of marriage for girls and boys that is in line with international standards.

Unemployment

15. Despite the limited information available, the Committee expresses its concern about the reported high unemployment rate disproportionately affecting women and youth (art. 6).

The Committee urges the State party to include, in its next periodic report, updated statistical data on unemployment, disaggregated by sex, age and urban/rural population. It should also report on the concrete measures taken to create employment, including the adoption of a new Employment Programme, and on their effectiveness. The State party is further requested to step up its efforts to reduce unemployment among women and youth. The Committee draws the State party's attention to its general comment No. 18 (2005) on the right to work.

Minimum wage

16. The Committee is concerned that the State party has not set a national minimum wage (art. 7).

The Committee urges the State party to take the necessary measures under the Labour Act to establish a national minimum wage that is periodically reviewed and set at a level sufficient to provide all workers and their families with a decent living.

Workers in the informal sector

17. The Committee is concerned at the high concentration of workers in the informal sector, which is not covered by basic labour standards or social protection, and at the inadequate action by the State party to address this situation (arts. 7 and 9).

The Committee recommends that the State party adopt measures aimed at reducing the proportion of workers in the informal sector by taking steps to regularize it gradually. The State party is also requested to guarantee that such workers are able to exercise their labour rights, including the right to social security.

Sexual harassment in the workplace

18. While noting that sexual harassment is addressed by the Act on Violence against Women and Girls, the Committee notes with concern that sexual harassment in the workplace is reportedly widespread, and regrets the lack of data on complaints and court cases relating to sexual harassment, and on their outcome (art. 7).

The Committee requests the State party to include in its next periodic report information on the incidence of sexual harassment in the workplace as well as data on cases of sexual harassment brought to the courts, and their outcome. It also recommends that the State party redouble its efforts to raise public awareness of sexual harassment.

Social security

19. The Committee is concerned about the lack of universal social security coverage in the State party and about the limited information on the existing social security programmes and their coverage. The Committee also expresses its concern at the insufficient amounts of pensions (art. 9).

Recalling its general comment No. 19 (2008) on the right to social security, the Committee recommends that the State party take effective measures to increase social security coverage, and provide detailed information in its next periodic report on progress made thereon. The Committee encourages the State party to consider setting up a social protection floor, in line with recommendation No. 202 (2012) of the International Labour Organization. The Committee also recommends that the State party increase and regularly review the amounts of pensions to allow for an adequate standard of living for recipients and their families.

Trafficking of women and children

20. The Committee notes with concern that, despite the adoption of the Trafficking in Persons Act 2007 and the stringent sanctions against traffickers introduced in various laws, the State party remains a source and destination country for women and children subjected to trafficking for labour and sexual exploitation purposes (art. 10).

The Committee urges the State party to intensify its efforts to combat trafficking in persons for labour and sexual exploitation purposes, and to implement vigorously its anti-trafficking legislation and national action plan. The Committee also urges the State party to provide protection and rehabilitation services to victims and to prosecute offenders.

Economic exploitation of children

21. While noting that the minimum age for employment in the State party's legislation is in line with international standards, the Committee is concerned about the persistence of child labour in family businesses and in the informal sector. The Committee is also concerned about the limited implementation of the Labour Code and lack of information on the labour inspectorate (art. 10).

The Committee recommends that the State party take effective measures to combat and prevent economic exploitation of children, especially child labour in family businesses and in the informal sector. To this end, the State party should ensure that the legal provisions on child labour are effectively enforced, that individuals who exploit children are duly sanctioned, and that the labour inspectorate is strengthened to enable it to monitor effectively compliance with the legal provisions on child labour.

Street children

22. The Committee regrets the absence of detailed information on the number and situation of street children. It also expresses its concern about reports of children forced to beg or work in the street (art. 10).

The Committee calls upon the State party to address the root causes of the phenomenon of street children. The Committee requests the State party to provide in its next periodic report information, including statistical data, on street children and measures to provide protection and assistance to them, as well as on the prosecution of child labour offences.

Poverty

23. The Committee is concerned about the high levels of poverty in the State party, disproportionately affecting women and the population in rural areas. The Committee is also concerned about the lack of information on the results achieved by the previous poverty reduction strategies (I and II) (art. 11).

The Committee requests the State party to provide updated information on the prevalence of poverty in the State party in its next periodic report, identifying the groups and individuals most vulnerable to poverty, and concrete measures taken to assist them. The State party is also urged to update the Committee on the impact of the previous poverty reduction strategies, and to ensure that the Programme for Accelerated Growth and Employment is implemented with a rights-based approach and is supported by an effective, participatory and transparent monitoring mechanism. The Committee draws the attention of the State party to its 2001 statement on poverty and the International Covenant on Economic, Social and Cultural Rights.

Adequate housing and social housing

24. The Committee regrets the inadequate information provided in the State party's report on the situation of housing, as well as on the existence of social housing. In this respect, the Committee expresses its concern about the lack of clarity on the legal status and mandate of the Social Security and Housing Finance Corporation. The Committee is also concerned about the:

(a) Impact of the increasing changes in rainfall patterns on the livelihood and property of the population, particularly in the northern parts of the country and in urban slums;

(b) Reported population movement to unplanned and unregulated settlements in urban areas, which lack adequate housing and where there is often no access to safe drinking water and adequate sanitation (art. 11).

Recalling its general comment No. 4 (1991) on the right to adequate housing, the Committee urges the State party to:

(a) Provide updated information in its next periodic report on access to adequate housing and on homelessness, as well as on the existence of social housing, and in this respect clarify the legal status and mandate of the Social Security and Housing Finance Corporation;

(b) Adopt effective measures to address the adverse impact of changes in rainfall patterns on the right to adequate housing;

(c) Provide statistics, disaggregated by sex and age, on population movement from rural to urban areas, and take steps to improve the living conditions of the population in informal settlements, including by facilitating access to safe drinking water and improved sanitation, while seeking long-term solutions and ensuring that this population is guaranteed security of tenure.

Water and sanitation in rural areas

25. While appreciating the progress achieved in improving access to safe drinking water and sanitation, the Committee is concerned that access by the population in rural areas to safe drinking water and sanitation remains inadequate (art. 11).

The Committee calls upon the State party to intensify its efforts to ensure universal access to safe drinking water and to adequate sanitation facilities, particularly in rural areas, and draws the State party's attention to the Committee's general comment No. 15 (2002) on the right to water and to its 2010 statement on the right to sanitation.

Right to food

26. The Committee is concerned about the high levels of food insecurity in the State party and about the prevalence of malnutrition, especially among children under 5. The Committee is also concerned about the low agricultural production, which generates high food prices and significant reliance on food imports (art. 11).

The Committee recommends that the State party intensify its efforts, including under the National Nutrition Policy, to address chronic food insecurity, chronic malnutrition and the critical nutritional needs of children. The State party should take additional steps to improve agricultural production, including by ensuring that support to farmers is provided on a non-discriminatory basis, targeting small-scale farmers in particular. The Committee draws the State party's attention to its general comment No. 12 (1999) on the right to adequate food and to the Voluntary Guidelines to

support the progressive realization of the right to adequate food in the context of national food security, adopted by the Food and Agriculture Organization of the United Nations in 2004.

Access to health services and mortality rates

27. The Committee is concerned that there is no universal health-care coverage. It is also concerned about the low number of qualified health-care professionals and the critical shortage of health equipment and supplies. The Committee further notes with concern the high rates of maternal and infant mortality, in particular in rural areas (art. 12).

In line with its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee recommends that the State party:

(a) Intensify its efforts to improve health services, including through allocating increased resources to the health sector, and ensure that particular attention is paid to the training of health extension workers and to the provision of adequate medical equipment and supplies to health facilities;

(b) Take urgent steps to reduce the high rate of maternal and infant mortality and to ensure that births are assisted by a skilled attendant;

(c) Take into consideration technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality (A/HRC/21/22);

(d) Step up its efforts to improve access by women to basic obstetric and neonatal care, sexual and reproductive health services, and basic health-care facilities, in particular in rural areas.

Access to education and dropout rates

28. The Committee welcomes the progress achieved in improving access to education and in attaining gender parity in primary school enrolment. It remains concerned, however, about the:

(a) Continuing disparities between rural and urban areas in access to education and the hampering of access to education for refugee children;

(b) Hidden costs of education, mainly affecting children belonging to marginalized and disadvantaged groups;

(c) Poor school infrastructure, including limited access to water and sanitation facilities, particularly in rural areas, and the low quality of learning and teaching materials;

(d) High dropout rates, especially among girls, reportedly due to child marriage (arts. 13–14).

The Committee recommends that the State party continue to increase spending on the education sector and to use it effectively with a view to reaching full primary school enrolment, attendance and completion by all children. In line with its general comment No. 13 (1999) on the right to education, the Committee also urges the State party to:

(a) Strengthen various measures and programmes in order to address the problem of access to schools for children living in rural areas, and ensure that refugee children are issued with identity cards so as to facilitate their access to education;

(b) Address indirect and hidden costs of school education effectively;

(c) Intensify its efforts to improve school infrastructure and learning and teaching materials, in particular in rural areas;

(d) Take appropriate measures to reduce the dropout rate of children, in particular girls.

Internet access

29. The Committee notes with concern that access to the Internet is limited to some urban areas (art. 15).

The Committee urges the State party to redouble its efforts to increase affordable access to the Internet in all areas, in particular for disadvantaged and marginalized individuals and groups.

D. Other recommendations

30. **The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

31. **The Committee invites the State party to continue and strengthen its collaboration on issues relating to economic, social and cultural rights with the Office of the United Nations High Commissioner for Human Rights, specialized agencies and relevant United Nations programmes. Regarding in particular paragraphs 19 and 26 of the present concluding observations, the Committee recalls the undertaking of States parties under the Covenant to take steps, individually and through international assistance and cooperation, to achieve progressively the full realization of the Covenant rights.**

32. **The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, particularly among parliamentarians, public officials and judicial authorities, and to inform the Committee in its next periodic report on the steps taken to implement them. It also encourages the State party to engage non-governmental organizations and other members of civil society in the process of implementing the present concluding observations, prior to the submission of its next periodic report.**

33. **The Committee requests the State party to submit its second periodic report by 30 March 2017, in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2).**